IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Civil Writ Petition No.68 of 2001.

Judgment reserved on: 5.12.2006.

Date of decision: 28.12.2006

The Guglehar Co-op. Agriculture Service Society …**Petitioner**

Versus

State of Himachal Pradesh & Others. …**Respondents**

Coram

The Hon'ble Mr.Justice Dev Darshan Sud, J.

Whether approved for reporting?[1]

For the Petitioner:	**Mr.R.K. Gautam, Senior Advocate with Mr.Naveen Bhardwaj, Advocate.**
For Respondents 1 & 2:	**Mr.Rajan Dewan, Additional Advocate General.**
For Respondent No.3:	**Mr.Ajay Sharma, Advocate.**

Dev Darshan Sud, J.

This writ petition has been filed by the Guglehar Co-operative Society against the orders passed by the Additional Secretary(Cooperation), (Annexure-PJ), confirming the order (Annexure PG) passed by the Assistant Registrar Cooperative Societies, Una, holding the termination of the services of respondent No.3 by the petitioner to be illegal. The petitioner has prayed for quashing and setting aside the same.

---

[1] ***Whether reports of Local Papers may be allowed to see the judgment?***

Respondent No.3 is an employee of the petitioner and was charge sheeted on various grounds. An inquiry was held and his services were terminated by an order dated 29.9.1994 passed by the President of the petitioner-Society. It is unnecessary to go into the charges since the controversy is confined only to the fact as to whether the permission of the Registrar was required before terminating the services of the respondent.

Respondent No.3 preferred an appeal before the Assistant Registrar, Cooperative Societies, under Rule 26 of the Employment and Working Conditions of Secretaries of Primary Agricultural Credit Societies in Himachal Pradesh, against the order of termination. While up-holding the substantive charges levelled against respondent No.3, he set aside the order of termination only on the ground that before passing the order, the Managing Committee had not obtained approval/sanction from the Assistant Registrar, Cooperative Societies, as per directions of the Registrar, Cooperative Societies. No such order has been placed on the record.

An appeal was preferred by the petitioner before the Additional Secretary (Cooperation) to the Government of Himachal Pradesh, under Section 93 of the Himachal Pradesh Cooperative Societies Act, 1968. Again, while up-holding the substantive charges against respondent No.3, he held that it was mandatory

for the petitioner to have obtained the sanction of the Registrar before passing the order of termination. The entire reasoning is contained in one paragraph of the order which is under challenge in this writ petition.

Respondents No.1 and 2 have filed their reply wherein they have submitted in para-8(i) that:

> "Both the Authorities below have held under the mistaken belief that if the permission is to be sought for appointment, then it is also necessary that the Society must seek prior permission of the Assistant Registrar before terminating services of an employee (Secretary) who has been appointed with prior permission of Assistant Registrar".

No reply has been filed by the respondent No.3.

I have heard learned counsel for the parties and have gone through the record. The order which has been passed by the Secretary (Cooperation), cannot be sustained in law. There is nothing in Rule 56 requiring the prior sanction of the Registrar, Cooperative Societies, before the penalty of dismissal from service is imposed on the Secretary. It is strange that in the present case, the entire inquiry has been upheld as being legal and valid and the charges have been held to have been proved. The condition seems to have been imposed on the passing of

the order of termination requiring the approval of the Registrar. No instruction or order has been passed on the record of the case. It is not clear as to from where the condition has been incorporated. It is also not clear from the case as to how such a condition has been made mandatory. In fact, it is undisputed that the terms of employment and working conditions of the Secretaries of Primary Agricultural Credit Societies, have been approved by the Registrar, Cooperative Societies, Himachal Pradesh and it is under these Rules that the petitioner has been appointed.

Rule-25 prescribes the punishment for misconduct. This is reproduced in extenso in the writ petition and does not incorporate any condition that the prior sanction of the Registrar would be required before imposition of punishment. Rule 25(viii) stipulates that the order punishment will be under the signatures of the President of the Society or any other Member of the Committee duly authorized and handed over to the Secretary. Rule-26 deals with appeal.

Both the Authorities have acted ultra vires the provisions of the Act and the Rules framed thereunder and their orders cannot be sustained. The startling consequences are that an employee, who has been dismissed on proof of various charges, is being retained in service only for some hyper technicality which does not even exist as a condition precedent

imposed by the Act or Rules. As noticed above, respondent No.3 has not filed any petition challenging the substantive findings of the Inquiry Officer and their affirmation by the Appellate Authority. The order, which is impugned in the writ petition, cannot be sustained.

The writ petition is, therefore, accepted. The orders Annexures PG and PJ are quashed and set aside. The natural consequences flowing therefrom shall ensue. There shall be no order as to costs.

December 28,2006 **(Dev Darshan Sud)**
(aks) **Judge.**